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IN THE

Supreme Court of the United States

October Term, 1972

No. 72-1015

TRED-AIR OF CALIFORNIA, INC.,
Petitioner,

vs.

NATIONAL LABOR RELATIONS BOARD,
Respondent.

PETITIONER'S REPLY BRIEF

MORRIS LAVINE,
215 West Seventh Street
Suite 620
Los Angeles, California 90014
Tel: (213) MAdison 7-3241
Attorney for Petitioner.

WESTERN PRINTING COMPANY, WHITTIER—OXBOW 9-1722

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To the Honorable Warren Burger, Chief Justice, and to the Honorable Associate Justices of the Supreme Court of the United States:

Your Petitioner, Tred-Air of California, a California corporation, respectfully replies to the memorandum of the National Labor Relations Board in reply to our petition for writ of certiorari.

The respondent has misconceived our point and erroneously twisted their argument and did not reply to our points and issues.

Our point is that a corporation, whether state or federal, is a separate entity from an individual and whether it is a California corporation or any other corporation, it can only appear as a representative by an attorney at law duly licensed to practice as a lawyer.

California follows this point of law and California requires an attorney to appear and represent it, since a corporation is a distinct legal entity, separate and apart from its members or stockholders and from its directors or officers. (*Curtiss v. Murry,* 26 Cal. 633; *Miners' Ditch Co. v. Zellerbach,* 37 Cal. 543; *Copsey v. Sacramento Bank,* 133 Cal. 659, 66 P. 7, 204; *Erkenbrecher v. Grant,* 187 Cal. 7, 200 P. 641; *Miller v. McColgan,* 17 Cal. 2d 432, 110 P. 2d 419, 134 ALR 1424)

Thus a stockholder is not in legal contemplation the employer of those working for the corporation. (*Parkinson (J.F.) Co. v. Building Trades Council,* 154 Cal. 581) Nor is he the owner of the corporate property. (*Johnson v. Kirby,* 55 Cal. 482; *Miller v. McColgan,* 17 Cal. 2d 432, 134 ALR 1424)

A corporation is an artificial person. (*Dearborn v. Grand Lodge,* 138 Cal. 658)

A corporation may invoke the equal protection clause of the Fourteenth Amendment against any proscribed action by a state. (*Johnson v. Goodyear Mining Co.,* 127 Cal. 4)

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Under federal law, as well as state law, only an attorney can appear for it and plead and manage its case. (*Mullin Johnson Co. v. Penn Mutual Life Ins. Co.*, 9 F. Supp. 975; *Brandstein v White Lamps, Inc.*, 20 F. Supp. 369)

The attorney for the National Labor Relations Board, in his reply, made it appear or attempted to make it appear that the issue was only whether the law of California regarding representation in California by an attorney for a corporation was necessary.

Our point was and is that whether the corporation is a California corporation or a corporation in any other state, that the person who appears for it in a representative capacity must be an attorney at law since it is not the person of the president or his statements that are involved, but is the actual action of the corporation that is liable and is subject to penalty and not the individual president. **Congress surely intended corporations to be adequately represented before the National Labor Relations Board.**

Neither *National Labor Relations Board v. Hearst Publications, Inc.*, 322 U.S. 111, 123, nor *Hill v. Florida*, 325 U.S. 538, 542, are in point in answer to our argument.

In *Hill v. Florida*, 325 U.S. 538, the only question involved was whether a Florida statute regulating labor union activities had been applied to the petitioners in that case in a manner which brings it into ir-

reconcilable conflict with the collective bargaining regulations of the National Labor Relations Act. No issue was involved in that case as to whether a corporation, whether state or federal, had to be represented by an attorney and whether merely as an officer of the corporation, without any resolution or other authority from the corporation, the president of the corporation could appear and represent. The questions in *Hill v. Florida* are quite different.

Congress, by the enactment of the National Labor Relations Act, did not intend to preclude the states from exercising to the utmost extent their sovereign powers to enforce the requirement that corporations, whether in California or elsewhere, can only be represented by an attorney at law and the right and obligations of the corporation and its stockholders to be represented only by a qualified person with knowledge of its legal rights and duties.

National Labor Relations Board v. Hearst Publications, Inc., 325 U.S. 538, involved the issue of whether newsboys who distributed their papers had rights and were able to bargain with four newspapers. The newspapers contended that they were not required to bargain with the newsboys' Union because newsboys are not the employees of newspapers within the meaning of the term in the National Labor Relations Act, 29 USCA, Section 152. Again, there was no issue of requiring an attorney to represent them. There was

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nothing in the case that held that the National Labor Relations Board could dispense with corporations generally, and an attorney to represent them. There was nothing in the statute specifically requiring that the corporations and their stockholders be represented before the National Labor Relations Board by an attorney at law well qualified to give it the kind of representation that due process requires and to give it the effective aid of counsel, whether it is a California corporation or a corporation elsewhere.

Due process of law requires adequate representation by counsel. See: *Powell v. Alabama,* 287 U.S. 45, 77 L.Ed. 158.

WHEREFORE, Tred-Air of California, Inc. prays that this Court grant certiorari and accord to Tred-Air the right to have effective aid of counsel in it and to reverse the judgment and orders below.

Respectfully,

MORRIS LAVINE,

Attorney for Petitioner.